

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMEL MANNING,

Plaintiff,

v.

MIGUEL A. FUENTES, JR., President

BRONXCARE HEALTH SYSTEM,

Defendants.

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* CIVIL ACTION NO.

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* EEOC Charge No. 520-2019-04159

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COMPLAINT

Comes Now, Plaintiff, Jamel Manning, pro se, and files his Complaint against the above-named Defendants on the following grounds:

INTRODUCTION

This is an action for racial discrimination and retaliation pursuant to 42 U.S.C. § 2000e et seq. (Title VII of the Civil Rights Act of 1964), as amended by the Civil Rights Act of 1991.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

Defendants are an “employer” engaged in an industry affecting commerce as defined by 42 U.S.C. § 2000e(b). 4. This Court has personal jurisdiction over Defendant Bronxcare Health System. (“hereinafter referred to as Bronxcare”). Defendant BronxCare Health System is a not-for-profit Defendant, BronxCare Health System is a voluntary, not-for-profit health and teaching hospital system serving the South and Central Bronx and is subject to the jurisdiction of this Court.

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VENUE

Defendants operate their business in the Bronx, within the Southern District of New York. All actions by Defendants alleged herein occurred within the Southern District of New York. Venue in this district is proper for the Defendant pursuant to 28 U.S.C. § 1391(b) & (c).

THE PARTIES

The Plaintiff is an African American male who lives at 55 West 180th St Apt D6, Bronx, N.Y. 10453, within the Southern District of New York. Defendant, BronxCare Health System is a voluntary, not-for-profit health and teaching hospital system serving the South and Central Bronx and is subject to the jurisdiction of this Court.

Defendant BronxCare Health System may be served with summons and process by service upon Selena E. Griffin-Mahon, Assistant Vice President, Human Resources, Bronxcare Health System, 1276 Fulton Ave. 6th Floor, Bronx N. Y. 10456, and Miguel A. Fuentes, Jr. President and Chief Executive Officer of Bronxcare System at 1650 Grand Concourse, Bronx, N.Y. 10457, and is subject to the jurisdiction of this Court.

FACTS

1. In 2013, Plaintiff began working for BronxCare Health System, as a floor-waxer in the Housekeeping Unit, Environmental Services department.
2. In May 2014 Plaintiff was transferred from the Environmental Services department to the Satellite Clinics department, under the supervision of George Rodriguez. Plaintiff's job was to strip and wax the floors of various clinics under the Bronxcare Health System Networks.

3. Unlike other non-African American employees, Rodriguez never introduced or oriented Plaintiff to these various sites, rather he just gave Plaintiff the location and some of the equipment and leaving Plaintiff to figure out things on his own.
4. From 2014 until 2019, unlike other employees at Bronxcare, Plaintiff was not given an organization uniform. This caused conflicts and negative interactions with staff and other co-workers at the various sites, who were unaware that Plaintiff was an authorized employee. Instead, Plaintiff, a young Black male, was treated as a trespasser and worse.
5. Since 2016, Rodriguez has refused to authorize any Plaintiff overtime work at the Bronxcare Child Study Center, on 176th Street and he has not allowed Plaintiff to work—at all—at the AOPD2 clinic, without any explanation or legitimate justification.
6. Since 2017, and without any business justification, Rodriguez denied Plaintiff overtime. By excluding Plaintiff from the 'rotation', Rodriguez refused to authorize and schedule Plaintiff the available overtime. This was especially problematic in that the satellite sites often went without adequate floor cleaning during this period.
7. Conversely, while Rodriguez was preventing Plaintiff the opportunity to make overtime, he gave many of his Hispanic staff generous amounts of overtime. Specifically, Rodriguez gave overtime to Hispanic employees Nunez and Orlando. He has also given overtime to an employee by the name of Anthony, after immediately Anthony returned from Suspension.
8. On or about March 2017, after the retirement of two employees on the coveted morning shift, Plaintiff was denied his long-standing bid on said shift. Instead of recognizing Plaintiff's seniority, Rodriguez granted the shift to two newly hired Hispanic males.

9. During a meeting on June 10, 2019, Rodriguez informed Plaintiff that in 30 days, he will be switching his shift from 3pm-11:30pm to 6pm-2:30am because he feels that Plaintiff has too much free time during his current working hours – Those shift hours were never changed in July 2019, and were in limbo for months as Rodriguez taunted Plaintiff with his ability to change his shift at the supervisor's leisure.
10. Plaintiff filed a union grievance in October 2019. He raised the issue of discrimination—thus participated in protected activity. Immediately thereafter, and in retaliation, Plaintiff's shift was changed effective November 11th, 2019 after over 5 years of having the 3pm – 11pm shift.
11. Unlike other non-African American employees, Rodriguez has refused to speak with Plaintiff directly except for text messages in which he takes hours to days to respond.
12. Rodriguez failed to ensure that Plaintiff has working equipment and provided Plaintiff with equipment which had safety hazards. For example, Rodriguez left Plaintiff to work with old mops and a wet vacuum with frayed wiring.
13. Rodriguez failed to communicate with Plaintiff in a timely manner, disallowing Plaintiff the opportunity to receive relevant information or necessary materials needed to perform his work duties promptly and safely.
14. In short, the Plaintiff has been treated differently than similarly situated employees by Defendants Bronxcare in the terms and conditions of his employment because of his race. Defendants have engaged in illegal discrimination against the Plaintiff because of his race.

15. Rodriguez has informed that he will no longer grant Plaintiff any overtime, thus the discriminatory treatment is on-going and, as such, is a continuing violation of Title VII.
16. On or about December 16, 2019, the Plaintiff filed a timely **Charge of Discrimination** alleging racial discrimination with the Equal Employment Opportunity Commission (“EEOC”). (A true and accurate copy of EEOC Charge of Discrimination # **520-2019-04159** is attached hereto as Exhibit A)
17. The Plaintiff has satisfied all statutory prerequisites for filing this action.
18. On or about August 21, 2020, the Plaintiff received his **Dismissal and Notice of Rights** letter from the EEOC for his Charge of Discrimination. (A true and accurate copy of the EEOC “Dismissal and Notice of Rights” letter for EEOC Charge of Discrimination # **520-2019-04159**, is attached hereto as Exhibit B)
19. The Plaintiff has filed this action under Title VII within ninety (90) days after receipt of her “Notice of Right to Sue” letter from the EEOC.
20. Defendants’ discriminatory conduct, in violation of Title VII, has caused the Plaintiff to suffer a loss of pay, benefits, and prestige.

COUNT ONE: TITLE VII - RACE

Plaintiff incorporates herein paragraphs 1 through 13 of his Complaint. Defendants have engaged in intentional race discrimination in the terms and conditions of the Plaintiff’s employment, including, but not limited to, the Plaintiff’s being denied overtime, uniform, timely information, and basic equipment. Defendants’ conduct violates Title VII of the Civil Rights Act of 1964.

COUNT TWO: TITLE VII – RETALIATION

Plaintiff incorporates herein paragraphs 1 through 13 of his Complaint. Defendants have engaged in retaliation and reprisal for Plaintiff's exercise of protected activity in violation of Title VII of the Civil Rights Act of 1964.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment as follows:

- A. That the Court grant full front pay to the Plaintiff.
- B. That the Court grant full back pay to the Plaintiff for overtime hours denied.
- C. That the Court grant Plaintiff compensatory damages for the humiliation, emotional distress, and other damages caused by Defendants' conduct.
- D. That the Court grant Plaintiff punitive damages for Defendants' malicious and recklessly indifferent conduct.
- E. That the Court grant Plaintiff all employment benefits he would have enjoyed had he not been discriminated and retaliated against.
- F. That the Court grant Plaintiff expenses of litigation.
- G. That the Court grant Plaintiff a jury trial.
- H. That the Court grant Plaintiff all other relief the Court deems just and proper.

CERTIFICATION AND CLOSING

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint:

(1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

(2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law.

(3) the factual contentions have evidentiary support or, if specifically, so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully submitted,

Jamel Manning, Pro se

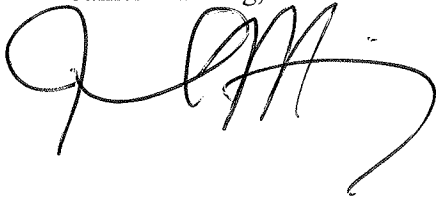
A handwritten signature in black ink, appearing to be 'J. Manning', written over the printed name 'Jamel Manning, Pro se'.

Exhibit A

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): <input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC 520-2019-04159	
NEW YORK STATE DIVISION OF HUMAN RIGHTS and EEOC <i>State or local Agency, if any</i>			
Name (indicate Mr., Ms., Mrs.) MR. JAMEL K MANNING		Home Phone (929) 263-8364	Year of Birth
Street Address City, State and ZIP Code 55 WEST 180TH STREET, BRONX, NY 10453			
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name BRONXCARE		No. Employees, Members	Phone No. (718) 590-1800
Street Address City, State and ZIP Code 1276 FULTON AVENUE, MORRISANIA, NY 10456			
Name		No. Employees, Members	Phone No.
Street Address City, State and ZIP Code			
DISCRIMINATION BASED ON (Check appropriate box(es).) <input checked="" type="checkbox"/> RACE <input type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input type="checkbox"/> OTHER (Specify)		DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 05-15-2013 11-26-2019 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)): I am a Black male who has been employed at the above-named entity as a Stripper & Waxer since August 2012. I believe I was discriminated against by my employer on the basis of my race (Black) and national origin (American) when I was harassed and subjected to a hostile work environment, for the past 6 years, by my Hispanic supervisor, George Rodriguez. My supervisor told me that he will fire me, yells at me, has denied giving me overtime, and refuses to hand me my check since 2013. I have only been given 7 hours of overtime for the past 11 months, but Mr. Rodriguez gives all of the Hispanic workers, namely Mr. Nunez and Orlando, last name unknown overtime. I requested to work on the weekends, but Mr. Rodriguez changed my shift so that I cannot work overtime. June 20, 2019, I filed an internal discrimination complaint with Respondent. In retaliation for filing an internal complaint, my supervisor, refused to give me overtime, changed my shift from 3 pm - 11:30 to 11 pm to 7:30 am. I have requested for Respondent to move me to another department and I have been denied opportunities to transfer and to be promoted. I was out sick from November 13, 2019 November 15, 2019 and Mr. Rodriguez tried to			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - When necessary for State and Local Agency Requirements	
I declare under penalty of perjury that the above is true and correct.		I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
Digitally signed by Jamel Manning on 12-12-2019 02:39 PM EST		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)	

EEOC Form 5 (11/09)

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**520-2019-04159****NEW YORK STATE DIVISION OF HUMAN RIGHTS**

and EEOC

State or local Agency, if any

terminate me. I had a doctors note for my absences but my supervisor tried to push me to be terminated. I have not been given the proper working equipment or uniforms to perform my job to the best of my ability since I was transferred to this unit. For example, I was given a buffer that is not for stripping and waxing, frayed extension cords, and a broken wet vacuum. I asked my supervisor to get this item fixed and he has refused to do so. I am the only stripper/waxer in my department and my supervisor will not give me overtime, but will give the Hispanic housekeepers overtime to do my job as a stripper/waxer. A Caucasian Director, Teresa, last name unknown told my current supervisor to not give me over time or promote me. I am being set up for termination. I am excluded from all meetings and I have been put in a corner away from everyone.

Based on the above, I believe I was discriminated against in violation of Title VII of the Civil Rights Act of 1964, as amended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

Digitally signed by Jamel Manning on 12-12-2019 02:39 PM
EST

NOTARY - *When necessary for State and Local Agency Requirements*

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

EEOC Form 161-B (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: **Jamel K. Manning**
55 West 180th Street
Apt. D6
Bronx, NY 10453

From: **New York District Office**
33 Whitehall Street
5th Floor
New York, NY 10004



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

520-2019-04159

Perry Canales,
Supervisory Investigator

(929) 506-5318

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA **must be filed in a federal or state court WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)



More than 180 days have passed since the filing of this charge.



Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.



The EEOC is terminating its processing of this charge.



The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, **the paragraph marked below applies to your case:**



The EEOC is closing your case. Therefore, your lawsuit under the ADEA **must be filed in federal or state court WITHIN 90 DAYS of your receipt of this Notice**. Otherwise, your right to sue based on the above-numbered charge will be lost.



The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission
 Digitally signed by Perry A. Canales
 DN: cn=Perry A. Canales, o=Equal Employment
 Opportunity Commission, ou=New York District
 Office, email=perry.canales@eeoc.gov, c=US
 Date: 2020.08.21 16:06:23 -04'00'

Perry A. Canales

For

8/21/2020

(Date Mailed)

Enclosures(s)

Judy A. Keenan,
District Director

CC:

Selena E. Griffin-Mahon
Assistant Vice President, Human Resources
BronxCare Health System
1276 Fulton Ave 6th Floor
HR
Bronx, NY 10456